IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 216

UNITED GAS PIPE LINE COMPANY, *Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

REPLY BRIEF OF PETITIONER

This very short reply brief is filed because of two material, relevant matters that have occurred since the petition for a writ of certiorari was filed in this Honorable Court in the above entitled and numbered cause. These two matters are:

I.

As showing the general importance of the decision of the Court below (R. 349), we desire to point out that in the case of *Arrow Airways, Inc., et al.* v. *Civil Aeronautics Board,* No. 228, October Term, 1950, United States Supreme Court, (Opinion of lower court reported 182 F. 2d 705) a petition for a writ of certiorari has recently been filed in this Court which specifically shows on pages 5 and 6 thereof the national scope, effect, and importance of the opinion

of the Court below herein and of the matters and things involved in the petition for a writ of certiorari herein filed.

The opinion of the court below (R. 349) was the sole basis for the one-paragraph opinion (182 F. 2d 705) involved in said docket No. 228, *supra*.

As was predicted on page 5 of the petition for certiorari herein filed, the opinion of the Court below (R. 349) is already being cited as deciding that from the standpoint of direct judicial review an administrative agency can avoid same (regardless of the adjudicatory impact on any party) by not holding any hearing and using the label of "rule making".

The artful procedure used by Respondent herein to avoid direct judicial review will, in the absence of intervention by this Court, set a national pattern for practically all administrative agencies to achieve the same result. This is amply demonstrated by the brief in opposition to certiorari filed in said suit No. 228 by the Civil Aeronautics Board. (See pages 7 and 8 of said brief).

The said artful procedure used by Respondent consists of:

(1) Not having any hearing.

(2) Using the label of "rule making".

(3) Referring only to sections of the applicable statute relating to rule making and making no mention of sections requiring a hearing.

(4) Not filing a motion to dismiss because of admitting thereby, for the purpose of the motion, the allegations of the petition for direct judicial review.

(5) Requesting only, by brief and in oral argument, that the Court on its own initiative dismiss.

II.

Respondent has in the last few days filed its brief in opposition to the petition for a writ of certiorari herein.

On pages 13, 14, 15 and 16 of said petition, and in paragraphs 5 and 6 of the petition for rehearing (R. 361 and 363) in the Court below, it was specifically pointed out that Respondent had admitted in effect that the challenged order was adjudicatory as to Petitioner. Specific page references to Exhibit 1 showing said admissions were given on pages 15 and 16 of said petition.

Respondent in its brief in opposition to said petition for a writ of certiorari has very obviously made no reference to said admissions, and makes an argument based on the premise that the challenged Order No. 144 is not adjudicatory as to Petitioner.

Respondent having admitted that said order is adjudicatory as to Petitioner is bound by said admissions, and its failure to explain, repudiate, avoid, or even mention same in its brief in opposition to said petition is highly significant.

In said petition it was stated (page 14) Respondent *has not* and *will not deny* certain adjudicatory impacts of the challenged order. Surely the brief in opposition provided an excellent opportunity for Respondent to attempt to explain or avoid said admissions, if possible.

Since the challenged order is admittedly adjudicatory as to Petitioner and was admittedly issued without a hearing, it is invalid as violating the due process clause of the Fifth Amendment to the Constitution of the United States. Extracts from relevant cases sustaining this "horn book" law will be found on pages 16 to 20 inclusive of the petition for the writ of certiorari herein filed.

Conclusion.

For the foregoing reasons and the reasons set forth in the Petition for a Writ of Certiorari herein filed, said petition should be granted.

Respectfully submitted,

C. HUFFMAN LEWIS
1525 Slattery Building
Shreveport, Louisiana

W. SCOTT WILKINSON
1525 Slattery Building
Shreveport, Louisiana

GEO. D. FISER
United Gas Building
Shreveport, Louisiana
Counsel for Petitioner
United Gas Pipe Line Company

September 5, 1950.

No. 216

FEDERAL POWER COMMISSION

NATURAL GAS ACT

JANUARY 1, 1960

FEDERAL POWER COMMISSION

NATURAL GAS ACT

JANUARY 1, 1950

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FOREWORD

NATURAL GAS ACT

The Natural Gas Act was approved June 21, 1938 (52 Stat. 821–833; Title 15 U. S. C. §§ 717–717w) and amended February 7, 1942 (56 Stat. 83–84; Title 15 U. S. C. § 717f), and July 25, 1947 (61 Stat. 459; Title 15 U. S. C. § 717f (h)).

NATURAL GAS ACT

[PUBLIC—No. 688—75TH CONGRESS]

[CHAPTER 556—3D SESSION]

[H. R. 6586]

AN ACT

To regulate the transportation and sale of natural gas in interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES

Declaration of policy.

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

Act applies to transportation and sale for resale of natural gas in interstate commerce.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [52 Stat. 821 (1938); 15 U. S. C. § 717 (1946)]

Not to apply to other transportation or sale or to the local distribution or facilities or gathering of natural gas.

Meaning of terms as used.

SEC. 2. When used in this act, unless the context otherwise requires—

"Person."
"Corporation."

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

"Municipality."

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

"State."

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

"Natural gas."

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

"Natural-gas company."

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

"Interstate commerce."

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

"State commission."

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

"Commission" and "Commissioner."

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively. [52 Stat. 821 (1938); 15 U. S. C. § 717a (1946)]

EXPORTATION OR IMPORTATION OF NATURAL GAS

Exportation or importation prohibited except on Commission order granting authority.

SEC. 3. After six months from the date on which this act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The

Application; hearing.

Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate. [52 Stat. 822 (1938); 15 U. S. C. § 717b (1946)]

Order may be granted wholly, or in part, and on conditions.

Supplemental order.

RATES AND CHARGES; SCHEDULES; SUSPENSIONS OF NEW RATES

SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

Rates and charges for transportation or sale to be just and reasonable.

Unreasonable rates and charges are unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

Undue preference or advantage prohibited.

Unreasonable differences in rates, etc., or in localities or classes of service forbidden.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

Filing and posting of rate schedules subject to rules and regulations of Commission.

Public to have access to rate schedules.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in

Thirty days' notice of change in rates required.

any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

Posting; filing rate changes.

Relief by Commission from operation of section.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any

Investigation of new schedules may be made on complaint or initiative of Commission.

Hearing.

Suspension pending decision.

Suspension period not to exceed 5 months.

Rate, etc., for sale for resale for industrial use only cannot be suspended.

On expiration of suspension period change, on motion, shall go into effect.

If rates are increased, bond for refund may be required.

amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U. S. C. 717c (1946)]

Accurate accounts of increased rate collections.

Refund of increased amount.

Burden of proof as to reasonableness of increased rate on company.

Preference.

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however, That* the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

Commission upon own motion or complaint may determine reasonable rate, etc.

Just and reasonable rate, etc., shall be fixed by order.

Commission cannot order increase apart from filed schedule, but may order decrease in rates, etc.

Commission may investigate and determine cost of production or transportation where it cannot establish rate.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. [52 Stat. 823 (1938); 15 U. S. C. 717d (1946)]

ASCERTAINMENT OF COST OF PROPERTY

Actual legitimate cost of property, depreciation, etc., to be ascertained for rate making.

SEC. 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

Inventory, statement of original cost, and additions, betterments, etc., to be filed upon request.

(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction. [52 Stat. 824 (1938); 15 U. S. C. 717e (1946)]

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

Commission may direct extension or improvement of transportation facilities and establishment of physical connections.

SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Com-

mission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers. [52 Stat. 824 (1938); 15 U. S. C. 717f (a) (1946)]

Commission has no authority to compel enlargement of facilities, etc., if ability of company to render adequate service is impaired.

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [52 Stat. 824 (1938); 15 U. S. C. 717f (b) (1946)]

No abandonment of facilities or service without approval of Commission.

(c)[1] No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

Certificate of public convenience and necessity required for construction or extension of facilities.

Grandfather clause certificates.

[1] Subsection 7 (c) was amended February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83.

Procedure upon application for non-grandfather clause certificates.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That

Temporary certificates.

the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice of hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [52 Stat. 825 (1938), as amended, 56 Stat. 83 (1942); 15 U. S. C. § 717f (c) (1946)].[1]

Exemption by regulation.

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[1] As originally enacted June 21, 1938 by Public Law No. 688, 75th Congress, Chapter 556, 3d Session [H. R. 6586], 52 Stat. 825, Section 7 (c) read as follows:

"(c) No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: *Provided, however,* That a natural-gas company already serving a market may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates. Whenever any natural-gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission. In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." (52 Stat. 825 (1938))

Application for certificate; form and content.

(d)[3] Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (d) (1946)]

Requirements for issuance of certificate.

(e)[4] Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (e) (1946)]

Commission may attach terms and conditions to issuance of certificate.

Commission may determine service areas.

(f)[5] The Commission, after a hearing had upon its own motion or upon application, may determine the

(Footnote 2 continued.)

Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, which amended Section 7 (c), effective February 7, 1942, was enacted after the Commission's decision *In the Matter of Kansas Pipe Line & Gas Company*, 2 F. P. C. 29.

[3] Subsection 7 (d) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

[4] Subsection 7 (e) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

[5] Subsection 7 (f) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization. [56 Stat. 84 (1942); 15 U. S. C. § 717f (f) (1946)]

Commission may issue certificate for service of area already being served.

(g)[6] Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company. [56 Stat. 84 (1942); 15 U. S. C. § 717f (g) (1946)]

Certificate holder may acquire right-of-way for pipe line by eminent domain proceedings in U. S. District Court.

(h)[7] When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. [61 Stat. 459 (1947); 15 U. S. C. § 717f (h) (Supp. II, 1949)]

Practice and procedure shall conform to that of State where property situated.

[6] Subsection 7 (g) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

[7] Subsection 7 (h) was added July 25, 1947 by Public Law No. 245, 80th Congress, Chapter 333, 1st Session [H. R. 2956], 61 Stat. 459.

ACCOUNTS, RECORDS, AND MEMORANDA

Natural-gas companies must keep accounts, records, etc., in accordance with Commission rules.

SEC. 8. (a) Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this act: *Provided, however*, That nothing in this act shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State.

Not relieved from keeping accounts, records, etc., required by State laws.

Commission may prescribe system of accounts and classify companies.

The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited.

Burden of proof to justify entries.

The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

Commission may suspend charges or credits pending proof.

Commission to have access to and right to inspect accounts, etc.

(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do.

Companies to furnish information, as Commission orders.

Information obtained by employees, etc., of Commission not to be divulged except as ordered by Commission or court.

No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

Books of persons controlling natural-gas companies subject to Commission examination.

(c) The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to tranactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission. [52 Stat. 825 (1938); 15 U. S. C. 717g (1946)]

RATES OF DEPRECIATION

Depreciation and amortization accounts to be in accordance with Commission rules.

Commission may determine adequate rate of depreciation.

SEC. 9. (a) The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

Depreciation charges shall not be charged to operating expenses unless authorized.

Jurisdiction of State commissions not limited by this section.

(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations. [52 Stat. 826 (1938); 15 U. S. C. 717h (1946)]

Commission may prescribe rules as to accounts, etc., or depreciation rates.

Notice and opportunity to State commissions to present recommendations.

PERIODIC AND SPECIAL REPORTS

SEC. 10. (a) Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this act. The Commission may prescribe the manner and form in which such reports shall be made, and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest due and paid, depreciation, amortization, and other reserves, cost of facilities, cost of maintenance and operation of facilities for the production, transportation, or sale of natural gas, cost of renewal and replacement of such facilities, transportation, delivery, use, and sale of natural gas. The Commission may require any such natural-gas company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

Natural-gas companies shall file reports as required.

Form to be prescribed by Commission.

Contents of reports.

Current determination of costs, etc.

Reports under oath.

(b) It shall be unlawful for any natural-gas company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this act or any rule, regulation, or order thereunder. [52 Stat. 826 (1938); 15 U. S. C. 717i (1946)]

Willful hindrance in making reports, etc., unlawful.

STATE COMPACTS; REPORTS ON

Commission to assemble and to report to Congress information on proposed compacts between States relating to conservation, etc., of natural gas.

SEC. 11. (a) In case two or more States propose to the Congress compacts dealing with the conservation, production, transportation, or distribution of natural gas it shall be the duty of the Commission to assemble pertinent information relative to the matters covered in any such proposed compact, to make public and to report to the Congress information so obtained, together with such recommendations for further legislation as may appear to be appropriate or necessary to carry out the purposes of such proposed compact and to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.

Commission to assemble current information relative to compacts between States.

Information to be public.

Reports and recommendations to be made to Congress.

(b) It shall be the duty of the Commission to assemble and keep current pertinent information relative to the effect and operation of any compact between two or more States heretofore or hereafter approved by the Congress, to make such information public, and to report to the Congress, from time to time, the information so obtained together with such recommendations as may appear to be appropriate or necessary to promote the purposes of such compact.

Records of other Government agencies to be available to Commission.

(c) In carrying out the purposes of this act, the Commission shall, so far as practicable, avail itself of the services, records, reports, and information of the executive departments and other agencies of the Government, and the President may, from time to time, direct that such services and facilities be made available to the Commission. [52 Stat. 827 (1938); 15 U. S. C. 717j (1946)]

OFFICIALS DEALING IN SECURITIES

Unlawful for officers or directors to benefit from sale or issuance of securities.

SEC. 12. It shall be unlawful for any officer or director of any natural-gas company to receive for his own benefit, directly or indirectly, any money or thing of value in respect to the negotiation, hypothecation, or sale by such natural-gas company of any security issued, or to be issued, by such natural-gas company, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends, other than liquidating dividends, of such natural-gas company from any funds

Unlawful for officers or directors to pay dividends from capital account.

properly included in capital account. [52 Stat. 827 (1938); 15 U. S. C. 717k (1946)]

COMPLAINTS

State, municipality, or State commission may file complaints.

SEC. 13. Any State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this act may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. [52 Stat. 827 (1938); 15 U. S. C. 717l (1946)]

Contents of petition.

Complaint to be forwarded to natural-gas company by Commission.

Answers to complaints to be filed in time specified by Commission.

INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS

Investigation by Commission of violations, etc.

SEC. 14. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress. The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized by section 312 of the Federal Power Act, and make available to State commissions and municipalities, information concerning any such matter.

Permission to persons to file statement concerning investigation.

Commission may publish information and make information available to State commissions, etc.

(b) The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held or controlled by any natural-gas company, or by anyone on its behalf, including its owned or leased properties or royalty contracts; and may also, after hearing, deter-

Adequacy of gas reserves may be determined by Commission.

Reasonableness of inclusion in operating expenses, etc., of charges for unoperated lands or leases, delay rentals.

Natural-gas companies may be required to file copies of all leases, royalty agreements.

mine the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases. For the purpose of such determinations, the Commission may require any natural-gas company to file with the Commission true copies of all its lease and royalty agreements with respect to such gas reserves.

Member of Commission may administer oath, subpena witnesses, compel their attendance, etc., and require production of books, records, etc.

Designated place of hearing.

Fees of witnesses.

(c) For the purpose of any investigation or any other proceeding under this act, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Aid of court may be invoked in cases of refusal to obey subpenas, contumacy.

Venue for application.

Court may order appearance of witness and production of records.

Failure to obey court order punishable as contempt.

Service of process.

Misdemeanor for failure to appear and testify or to produce books, etc.

(d) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedi-

ence to the subpena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

Fine and imprisonment upon conviction.

(e) The testimony of any witness may be taken at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Testimony by deposition.

Deposition may be taken before anyone authorized to administer oaths.

Counsel or parties in interest may not take deposition.

Notice of taking of deposition to opposite party.

Witnesses may be compelled to make deposition, etc.

Testimony shall be reduced to writing and subscribed to by deponent.

(f) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Deposition may be taken in foreign country.

Depositions to be filed with Commission.

(g) Witnesses whose depositions are taken as authorized in this act, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

Fees allowed deponents and persons taking same.

(h) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obe-

No person excused from testifying, etc., before Commission on ground that testimony may tend to incriminate him.

dience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [52 Stat. 828 (1938); 15 U. S. C. 717m (1946)]

No person claiming privilege shall be prosecuted on his testimony, etc.

Not exempt from prosecution for perjury in so testifying.

HEARINGS; RULES OF PROCEDURE

Any member of Commission or designated representative may conduct hearings.

Records of hearings shall be kept.

Commission to make rules for hearings.

Parties to proceeding.

SEC. 15. (a) Hearings under this act may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

Rules of practice and procedure; technical rules of evidence need not be applied.

Informality of hearing, etc., not to invalidate any order, rule, etc.

(b) All hearings, investigations, and proceedings under this act shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this act. [52 Stat. 829 (1938); 15 U. S. C. 717n (1946)]

ADMINISTRATION POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

General powers of Commission to issue, amend, rescind orders; prescribe rules and regulations; define accounting terms; prescribe forms.

SEC. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U. S. C. 717o (1946)]

Effective date of rules and regulations, etc.

Persons and matters within jurisdiction of Commission may be classified.

Rules and regulations shall be filed with Secretary and open in convenient form for public inspection.

USE OF JOINT BOARDS; COOPERATION WITH STATE COMMISSIONS

Reference of matters to joint boards composed of members from States affected.

Power of joint boards.

Force and effect of action of joint boards.

SEC. 17. (a) The Commission may refer any matter arising in the administration of this act to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be

Appointment of joint boards.

conducted in such manner as the Commission shall by regulations prescribe. The Board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

Allowances for expenses of board members.

Matters referred to board may be revoked.

Conferences with State commissions regarding rates, accounts, etc., authorized.

(b) The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

Cooperation with State commission.

Information and reports of Commission available to State commissions.

Availability of Commissions' experts as witnesses to State commissions.

(c) The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection. [52 Stat. 830 (1938); 15 U. S. C. 717p (1946)]

Disposition of compensation received from State commissions for experts, etc.

APPOINTMENT OF OFFICERS AND EMPLOYEES

Appointment of officers, attorneys, examiners, and experts.

SEC. 18. The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this act, without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with the Classification Act of 1923, as amended. [52 Stat. 831 (1938); 15 U. S. C. 717q (1946)]

Provisions of other laws relevant to employment and compensation not applicable.

Appoint other officers and employees under Classification Act, 1923.

REHEARING; COURT REVIEW OF ORDERS

Rehearing on order of Commission.

SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

Application must be made within 30 days of order.

Application for rehearing shall set forth grounds upon which based.

Commission may grant or deny application.

Application automatically denied unless Commission acts within 30 days.

Application for rehearing must precede court review of order.

Review of Commission orders by Circuit Court of Appeals or District of Columbia Court of Appeals.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the

Venue for appeal. Petition for review must be filed within 60 days after order on application for rehearing.

Service of copy of petition on Commission.

Transcript of record prepared by Commission and certified to Court.

Upon filing of transcript, Court has exclusive jurisdiction to affirm, modify, or set aside Commission order.

Only objections urged before Commission shall be considered by Court.

Findings of fact supported by substantial evidence are conclusive.

Additional evidence may be adduced before Commission upon leave of Court.

Commission may modify its findings by reason of such evidence.

Modified or new findings to be filed with Court.

Judgment or decree of Court on appeal final subject to review by Supreme Court.

District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

Order of Commission not stayed by application for rehearing unless specifically ordered.

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under sub-

section (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U. S. C. 717r (1946)]

Order of Commission not stayed by petition for review, unless ordered by court.

ENFORCEMENT OF ACT; REGULATIONS AND ORDERS

SEC. 20. (a) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this act, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, the District Court of the United States for the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this act or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of the Federal antitrust laws to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings.

Violation of provisions of act or of rules, regulations, orders of the Commission may be enjoined in District Court, etc.

Venue for injunction action.

Attorney General may institute criminal proceedings.

(b) Upon application of the Commission the district courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this act or any rule, regulation, or order of the Commission thereunder.

District courts, upon application of Commission, may issue writs of mandamus.

(c) The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the

Commission may employ attorneys to aid generally and to represent it in court.